Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ALFRED DIGIACOMO,

Petitioner,

v.

TEAMSTERS PENSION TRUST FUND
OF PHILADELPHIA AND VICINITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether ERISA's fee-shifting provision requires the award of attorney's fees to a prevailing party or, alternatively, whether any single one of the five factors to be considered in making the award should be preclusive?

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Other Authority:

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INTRODUCTION

This case concerns a split in the circuit courts regarding the application of ERISA's fee-shifting provision. This Court has held that ERISA authorizes the award of attorney's fees "in answer to a possible concern that attorney's fees might present a barrier to maintenance of suits for small claims." Consistently with that purpose, some circuit courts have applied the fee shifting rationale used by this Court in civil rights cases, holding that a prevailing party should ordinarily recover his attorney's fees. Other circuits, however, including the Third, have refused to award attorney's fees to prevailing parties unless the benefit denial was in bad faith, e.g., have denied fees where the issue involved was "close and difficult".

The "bad faith" rationale makes it almost impossible for beneficiaries to find attorneys willing to represent them on a contingency basis to challenge any but the most frivolous of benefit denials, thereby defeating the purpose of ERISA's fee-shifting provision.

OPINION BELOW

After the district court dismissed DiGiacomo's action on the merits in an unpublished opinion, the Court of Appeals for the Third Circuit ("Third Circuit") reversed the dismissal and ruled for DiGiacomo on the merits of his claim. The Third Circuit's opinion is reported at 420 F.3d 220. A petition for certiorari from that opinion is presently pending. (No. 05-841) Subsequently, in a separate unpublished opinion which is the subject of this Petition, the Third Circuit denied DiGiacomo's Motion for Attorney's Fees. App. A.

STATEMENT OF JURISDICTION

The Third Circuit issued its Judgment denying DiGiacomo's application for attorney's fees on November 15, 2005. App. A. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 502(g)(1), 29 U.S.C. § 1132(g)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

STATEMENT OF THE CASE

This Petition seeks a review of a decision by the Third Circuit which denied attorney's fees to Petitioner after ruling in his favor on the merits of his claim for greater pension benefits.

DiGiacomo applied to the Third Circuit for "$38,920.00 in attorney's fees for services rendered in successfully bringing an appeal from the District Court's dismissal of the action."[1] After holding that DiGiacomo was a "prevailing

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1. As noted by the Third Circuit, Defendants opposed the application for fees only in response to the Court's request. ("We requested that the Fund respond to DiGiacomo's application for attorney's fees"). Inasmuch as a fee request under a fee-shifting statute is an adversarial proceeding, the Court's request for the Fund's opposition is no different from a court's interposing *sua sponte* a waived affirmative defense, a practice held improper by this Court. *See Arizona v. California*, 530 U.S. 392, 412-13 (2000) ("trial courts must be cautious" not to "erod[e] the principle of party presentation so basic to our system of adjudication").

party", the Court held that he was not entitled to attorney's fees under ERISA § 1132(g)(1), because that section "does not automatically mandate an award to a prevailing party".

The Third Circuit held that the statutory issue involved was a "close and difficult one", and that the "divergence of opinion", which divided the Courts of Appeals and the panel itself, made it "clear to us that there was no culpability or bad faith on the part of the Fund in partially denying DiGiacomo's claim for accrued benefits." The Court held that, "[i]n these circumstances, we find no basis for a discretionary award of attorney's fees to the prevailing party."

The material facts underlying DiGiacomo's being a "prevailing party" in this litigation are uncontested. From 1960 to 1971, DiGiacomo earned a total of 10.5 years of benefit service under the Teamsters Pension Plan of Philadelphia and Vicinity. For the next five years he worked in employment not covered by the Plan, but he returned to covered employment in 1978, earning an additional 18 years of credited service. When he applied for a pension in the year 2000, he was credited only with his post-1978 employment on the grounds that, pursuant to the express provisions of the Plan, the benefit service he earned between 1960 and 1971 was forfeited due to his break in service from 1972 through 1977.

In his action, DiGiacomo argued that in calculating his accrued benefit, ERISA § 204 trumped the provisions of the Plan and required the Plan to credit all his service, regardless of his break in service. After the district court dismissed the action, the Third Circuit ruled in favor of DiGiacomo. Although the issue raised by DiGiacomo was one of first impression in the Third Circuit, the Court noted that "outside